

## **Amendments to the Federal Rules of Bankruptcy Procedure** (effective December 1, 2003)

Federal court case files, unless sealed or otherwise subject to restricted access by statute, federal rule, or Judicial Conference policy, are presumed to be available for public inspection and copying. See Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978) (holding that there is a common law right “to inspect and copy public records and documents, including judicial records and documents”). The tradition of public access to federal court case files is also rooted in constitutional principles. See Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 575-78 (1980). However, public access rights are not absolute, and courts balance access and privacy interests in making decisions about the public disclosure and dissemination of case files. The authority to protect personal privacy and other legitimate interests in nondisclosure is based, like public access rights, in common law and constitutional principles. See Nixon, 435 U.S. at 596 (“[E]very court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes”).

The term “case file” (whether electronic or paper) means the collection of documents officially filed by the litigants or the court in the context of litigation, the docket entries that catalog such filings, and transcripts of judicial proceedings.

The Amendments to the Bankruptcy Rules recognize the unique nature of bankruptcy case files and the particularly sensitive nature of the information, largely financial, which is contained in these files. The changes generally provide that a debtor’s personal, identifying information and financial account numbers will not be included in their complete forms on any document, whether electronic or hard copy (*i.e.*, only the last four digits of Social Security and financial account numbers will be used). The bankruptcy court will collect the full Social Security number of debtors for internal use, as this number appears to provide the best way to identify multiple bankruptcy filings. The names of minor children will not be included in electronic or hard copies of documents.

The redaction procedures will be instituted in each court by local rule or standing order. The responsibility to redact personal identifiers from pleadings, or not to include such information at all, rests solely with counsel and the parties. The clerk’s office will not review each pleading or attachment for compliance with the policy.

The Amendments are not retroactive. Courts will not have to go back and redact documents filed before adoption of the policy. Likewise, courts will not be required to eliminate electronic access to documents that could be electronically accessed prior to the policy.

You can access the transmittal letters, the Supreme Court order, the “clean” and strikeout versions of the Amendments online at <http://www.uscourts.gov/rules/congress0303.html>.